

**(Final Draft -5/29/02)**  
**PERIODIC PAYMENT PROCESS PROPOSAL**  
Revenue Neutrality/Payment Hierarchy

**BACKGROUND:** Customs is planning to implement a Monthly Periodic Payment (MPP) statement capability under ACE that incorporates existing Entry/Entry Summary and Importer Activity Summary Statement (IASS) payments. (This proposal does not discuss rules regarding assessment of Merchandise Processing Fees, or future capabilities that may incorporate refunds, bills, FP&F, etc. on monthly statements). The objective of this approach is to use a payment process that integrates with new Customs Periodic Payment and Entry processes. The Commissioner has set a standard that, "the process must be revenue neutral, i.e. neither the government nor the trade should profit from the payment cycle established". The baseline for revenue neutrality is the current Entry/Entry Summary payment process that permits up to 10 workdays from date of Entry/Release to payment at the time of filing the respective Entry Summary.

**DISCUSSION:** When an MPP capability is authorized for an Account, the following process and standards are applicable:

**Note: It is not clear at this point if there is a processing issue if every account has the same due dates. This proposal was written assuming the system will be able to accommodate the volume.**

The first estimated payment is due on the 22<sup>nd</sup> of the month for cargo released between the 1<sup>st</sup> and 15<sup>th</sup> of the importing month. The second estimated payment is due on the 7<sup>th</sup> of the following month for cargo released between the 16<sup>th</sup> and end of the importing month. Based on each Account's Entry Summaries or IASS submission(s) for the importing month, presented on the 10<sup>th</sup> of the following month, a Statement is prepared incorporating all MPP collections for the importing month (including appropriate collection classifications on a line by line basis). Up to this point all collection classifications are treated as estimates. The final payment is made on the 15<sup>th</sup> of the following month to update the respective Entry Summaries or IASS's on a line by line basis with an appropriate adjustment to collection classifications, e.g., duties, taxes, and fees (related to respective line items).

In the event that the final payment amount owed is at least within 5% of the total amount owed for each respective estimated payment (the 22<sup>nd</sup> and 7<sup>th</sup>), all Entry Summaries or IASS's for the importing month are treated as timely paid. A routine calculation will be used to determine if interest should be assessed/credited on under/over estimated payments received on the 22<sup>nd</sup> and 7<sup>th</sup>. This calculation by ACE for each MPP statement submitted must be done to assure continued compliance and revenue neutrality (a post payment validation option for IASS's, as prescribed below, may be elected by an approved payee). A rate that is determined to be fair for the Payee/Account and the government should be used. Historically (and when using baseline logic for determining fairness), rates prescribed under 26 U.S.C. 6621 would be used (and compounded daily under 26 U.S.C 6622), for underpayments and overpayments of duties, taxes, fees. It should be noted that comparison calculations (see attachment) for revenue neutrality use the Treasury Tax and Loan rate, Treasury's basic cost of borrowing funds, i.e., the Federal Funds interest rate less 25 basis points (1/4 percent).

In the event that the final payment amount is in excess of 5% of the total amount owed for the respective MPP statement, liquidated damages will be assessed for applicable entry summaries or IASS's (using the hierarchy prescribed below). The objective is to assure that neither the government nor the trade will profit from the MPP process established. Unpaid interest on underpayments would roll forward to the next MPP and be included in the next months revenue neutrality calculation as part of the total amount owed.

Accordingly: (1) each Entry-Release date and respective amount must be able to be associated in the Entry/Entry Summary and IASS process, to validate an ongoing revenue neutral activity, or (2) an acceptable post payment validation approach should be used. Post payment validation responsibility would require the Trade to have an approved and randomly accessible automated systems data base, record or file that provides for associating IASS payments to their respective Entry-Release date and amount.

### **RECOMMENDATION:**

Neutrality Approach: It is important to note that the estimated payment schedule and payment timeframe used above has been determined to be Revenue Neutral. It is based on an historical analysis of Entry/Release and respective Entry/Entry Summary payments. Revenue neutrality has been based on:

- An Account submitting an Entry/Entry Summary (which identifies date of entry/release); and,
- Comparison to the dollar amount paid for each respective Entry Summary.

The continued availability of that data set (date of Entry-Release and dollar amount paid on each Entry Summary) is essential in determining neutrality in compliance with the baseline established by the Commissioner.

When an IASS is involved, entry-release activity and information is rolled up to line items in summary form for the reporting month's activity. Without the ability to know how much money is related to each respective release and the release date, revenue neutrality can not be ascertained. Unless amounts paid can be related to respective entry summary release dates applicable to an IASS, continued compliance can not be assured. The formula below addresses this issue based on current interest rules on underpaid or overpaid duties, taxes and fees.

Neutrality Standard Baseline: If the amount paid at the time of final payment on the 15<sup>th</sup> of the following month is less than 5% of the total amount owed, interest (at a rate established under 26 U.S.C. 6621, 6622) should be charged on the underpayment amount attributed to entries scheduled to be paid on the 22<sup>nd</sup> and on the 7<sup>th</sup> of the following month. Interest will accrue from the 22<sup>nd</sup> and 7<sup>th</sup> respectively, on a daily basis, applicable to respective underpayments to the date the MPP final payment is actually received.

### **Proposed Revenue Neutrality Formulae:**

- **Entry/Entry Summary MPP:** Incorporate the same logic as currently used to determine revenue neutrality by comparing entry release dates to the 10 work day payment schedule for entry summary submissions, and compare to amounts paid on the 22<sup>nd</sup> of the month and the 7<sup>th</sup> of the following month to ascertain revenue neutrality. If the dollar amount underpaid on the MPP is less than 5% of the total amount finally determined to be due (and paid) on the 15<sup>th</sup> of the following month the MPP account is treated as paid timely; however, interest on the underpayment should be assessed to make the transaction revenue neutral. Interest amounts owed should roll forward to the next MPP and be included in the total amount owed.

The following two options relate to IASS submissions. Either option selected by the Trade is acceptable:

- **IASS MPP:** Incorporate the same logic as currently used to determine revenue neutrality by comparing entry release dates to the 10 work day payment schedule for entry summary submissions, and compare to amounts paid on the 22<sup>nd</sup> of the month and the 7<sup>th</sup> of the following month to ascertain revenue neutrality. This will require identification of revenue amounts related to each entry release included under the respective IASS on an MPP. If the dollar amount underpaid on the MPP is less than 5% of the total amount finally determined to be due (and paid) on the 15<sup>th</sup> of the following month the MPP account is treated as paid timely; however, interest on the underpayment should be assessed to make the transaction revenue neutral. Interest amounts owed should roll forward to the next MPP and be included in the total amount owed.
- **IASS MPP (Post Payment Validation) Approach:** The payment validation approach incorporates the same logic as currently used to determine revenue neutrality by comparing entry release dates to the 10 work day payment schedule for entry summary submissions. The significant business change with this approach permits the business community to keep underlying release data and IASS payment data available, as auditable and readily verifiable, in their systems and files on an "on demand" as needed basis. This approach is based on the premise of the Customs Modernization Act and places the responsibility on the Trade to keep underlying files and records supporting their entry and payment submissions, while at the same time significantly reducing the financial information required by Customs on a day by day basis. Only periodically, based on when Customs requests it for random sampling, the date of release/entry and respective amount would be compared to respective IASS payment data (provided on the 22<sup>nd</sup>, 7<sup>th</sup> and 15<sup>th</sup>) to validate ongoing revenue neutrality compliance. . Post payment validation responsibility would require the Trade to have an approved and randomly accessible automated systems data base, or other acceptable record or file system, that provides for associating IASS payments to their respective Entry-Release date and amount. This option could be made available only to low risk accounts. The trade would manage the calculations for revenue neutrality and make appropriate interest underpayments on the MPP.

Late Payment and No Payment MPP: Liquidated damages, **in addition to interest**, should be assessed if the amount paid at the time of final payment on the 15<sup>th</sup> of the following month is greater than 5% of the total amount owed. Liquidated damages would be required to be assessed on unpaid or late paid Entry Summaries and IASS's, determined by using the payment hierarchy prescribed below. Liquidated damages is a

separate procedural action by Customs requiring that a formal case be established and appropriate liquidated damages assessed for late payment or non payment of Entry Summaries, IASS's and/or MPP Statement amounts. This action is in addition to the interest amounts assessed for underpaid amounts based on revenue neutrality calculations.

### **Payment Hierarchy:**

Interest assessments incorporate interest charges on both principal and accrued interest, and are accrued on a daily basis for any unpaid or late paid amounts. Accordingly, the payment hierarchy should accommodate payment of principal amounts owed prior to interest amounts. The following payment hierarchy is recommended:

1. Apply against outstanding IASS's until paid in full;
2. Apply against outstanding entry/entry summaries until paid in full - based upon chronological release dates;
3. Apply any remainder of the payment against outstanding interest. (Note: if this order for applying payment against interest is not legally acceptable, this line will become line 1 in the hierarchy);
4. Payment must be made in full on IASS's and Entry Summaries. Remaining amounts that can not be fully applied, or applied against unpaid interest, will be reported as a credit to the statement account (and roll forward) pending receipt of additional funds to fully pay remaining IASS's or entries.
5. Apply any overpayment as an account credit. Refunds of credited amounts would be made only upon request by the Account. A general rule should be established, for example, where credit amounts over 60 days old or exceeding (\$100 or \$1000 or ?) would be automatically refunded to the Account, otherwise amounts would be applied to balances owed on MPP's submitted in the future.

It is recognized that the proposed hierarchy is different from the usual approach of paying interest owed before applying receipts to principle amounts owed on entry summaries or IASS's, i.e., duties, taxes, fees, etc. However, the implementing regulations should provide for this feature in order to keep entry processing and payment records related to entry summaries or IASS's working more efficiently. Liquidated damages should be provided for, assessed against the applicable bond principal (e.g., importer) in the event of underpayment or non payment of the amounts owed on the MPP. In the event that this is not an acceptable legal process the payment hierarchy must be modified to apply receipts to interest first (number 3 above), then follow the balance of the hierarchy as indicated above.

Contact: Robert B. Hamilton, Jr.  
(317) 298-1107